UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte CHARLES R. SPERRY, NEIL E. RICE, JR. and SUZANNE SCOTT

Appeal No. 2005-1159
Application No. 09/760,189

ON BRIEF

Before FRANKFORT, MCQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 4-11 and 13-20. Claims 3 and 12 have been canceled.

We REVERSE.

BACKGROUND

The appellants' invention relates to fluid dispensers and related apparatus used to produce on-demand foam-in-place packaging cushions and, more particularly, to an improved system for delivering cleaning solvent to certain portions of such fluid dispensers that are particularly susceptible to occlusion due to build-up and hardening

of fluid within the dispenser (specification, page 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The Applied Prior Art

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Sperry et al. (Sperry '847)	5,255,847	Oct. 26, 1993
Sperry et al. (Sperry '848)	5,996,848	Dec. 7, 1999

The Rejections

The following rejections are before us for review.

Claims 1, 2, 4-6, 8 and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sperry '848.

Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sperry '848.[1]

Claims 10, 11 and 13-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sperry '847 in view of Sperry '848.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed January 4, 2005) for the examiner's complete reasoning in support of the

[1] Although this rejection was not explicitly repeated in the examiner's answer, we presume that this rejection is maintained and that the examiner inadvertently omitted it because the appellants did not argue this rejection separately from the rejection of claims 1, 2, 4-6, 8 and 9 under 35 U.S.C. § 102.

rejections and to the brief (filed November 12, 2004) and reply brief (filed February 9, 2005) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Independent claim 1 recites a housing having an internal chamber and comprising an inlet for receiving a fluid product into the housing and being in fluid communication with the chamber, a discharge port through which fluid product may exit the housing, the discharge port having an interior surface and being in fluid communication with the chamber, and a valving rod comprising a central bore, at least one inlet in fluid communication with the bore for receiving cleaning solvent and one or more outlet ports in fluid communication with the bore and "being capable of directing cleaning solvent ***radially outwards*** from the bore ***and against said interior surface of said discharge port.***"

In the dispensing system of Sperry '848, the cleaning solvent flows through solvent port 166 into solvent initial supply area 312 and enters the bore (non-interference fit area 318) within mixing chamber defining member 218, on which the examiner reads the "valving rod" recited in appellants' claim 1, via radially extending passageway 256. The solvent then flows down along elongated main section 288 of

purge rod 270 and flows radially out through ports 234, 236 and then downwardly along the outer surface of mixing chamber defining member 218 and downwardly through the bore within the mixing chamber defining member 218 to the lower tip of the mixing chamber defining member 218.

The appellants argue that Sperry '848 lacks outlet ports "capable of directing cleaning solvent radially outwards from said bore against said interior of said discharge port" as called for in claim 1 and we agree. The only ports in the mixing chamber defining member 218 of Sperry '848 capable of directing cleaning solvent radially outwards from the bore are injection ports 234, 236. These ports are located above the chemical internal passageways 176, 178 through which chemicals A and B are introduced into the interior of the housing (main body 148) of the dispenser and cannot reasonably be considered to be directing cleaning solvent radially outwardly against the interior surface of the discharge port through which the chemicals may exit the housing. The examiner reads the "discharge port" on opening 153 of main body 148 and the appellants do not challenge this. We note, however, that the chemicals never enter opening 153 but, rather, flow from passageways 176, 178 directly into the bore within the mixing chamber defining member 218 through ports 234, 236. Accordingly, the "discharge port" of claim 1 would appear to read on the exit end of said bore, not the opening 153. As illustrated in Figure 28, the solvent is directed longitudinally downwardly along the interior surface of the bore at its exit end, not radially outwardly as called for in claim 1.

For the foregoing reasons, we cannot sustain the rejection of independent claim 1, or claims 2, 4-6, 8 and 9 which depend from claim 1, as being anticipated by Sperry '848. Inasmuch as the examiner's rejections of claim 7 as being unpatentable over Sperry '848 and claims 10, 11 and 13-19 as being unpatentable over Sperry '847 in view of Sperry '848 are grounded in part on the examiner's incorrect finding that Sperry '848 discloses the one or more outlet ports discussed above, it follows that we also cannot sustain these rejections.

We turn our attention now to the rejection of claim 20 as being unpatentable over Sperry '847 in view of Sperry '848. Claim 20 recites, *inter alia*, a housing having an internal chamber, an internal reservoir, in the housing, in which cleaning solvent may be contained, and a conduit providing fluid communication between the internal reservoir and the discharge port, through which the fluid product may exit the housing, to deliver cleaning solvent to the discharge port, the conduit positioned externally of the internal chamber. As illustrated in Figure 28 of Sperry '848, the cleaning solvent 310 is delivered to solvent initial supply area 312 through solvent introduction port 166 and then flows down into non-interference fit area 318 and downwardly to the lower tip of mixing chamber defining member 218. The only conduit for delivering cleaning solvent positioned externally of the internal chamber within which the valving rod (mixing chamber defining member 218) is movable is the line (not shown) which delivers solvent to the solvent introduction port 166 on main body 148 and this conduit does not provide fluid communication between the internal reservoir (solvent initial supply area

312 or non-interference fit area 318) and said discharge port, as called for in claim 20. Thus, the examiner's rejection of claim 20 as being unpatentable over Sperry '847 in view of Sperry '848, which relies on Sperry '848 for the conduit recited in claim 20, cannot be sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 4-11 and 13-20 is reversed.

REVERSED

CHARLES E. FRANKFORT
Administrative Patent Judge

JOHN P. MCQUADE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

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